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Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FRANK E. GABLE,

Petitioner,

v.

MAX WILLIAMS,

Respondent.

Case No. 3:07-cv-00413-AC

ANSWER

Respondent answers the Petition for Writ of Habeas Corpus and responds to this Court's Order, dated April 3, 2007, to show cause why the relief prayed for should not be granted and to state the true cause of petitioner's detention and whether remedies available to petition in the courts of the State of Oregon have been exhausted, as follows:

I.

Petitioner is in the custody of the Oregon Department of Corrections (ODOC) pursuant to the Judgment, dated July 12, 1991, from Marion County Circuit Court Case No. 90C-20442,

after convictions for six counts of Aggravated Murder and one count of Murder. Resp. Ex. 104. Following a jury trial, petitioner was sentenced to life imprisonment without the possibility of release or parole. *Id.*

II.

1. Petitioner directly appealed his convictions, but the Oregon Court of Appeals affirmed in a written opinion, *State v. Gable*, 127 Or. App. 320, 873 P.2d. 351 (1994), and the Oregon Supreme Court denied review. 319 Or. 274, 877 P.2d 1202 (1994). The record from the direct appeal is attached as Resp. Ex. 105-116.

2. Petitioner filed a petition for post-conviction relief in *Gable v. State of Oregon*, Marion County Circuit Court Case No. 95C12041, but the court denied relief. Resp. Ex. 345. The Oregon Court of Appeals rejected all but one of petitioner's assignments of error; namely, that counsel rendered ineffective assistance by not informing petitioner of his right to object to the sentence under ex post facto law, but also that he was not necessarily prejudiced by the failure. The Court of Appeals vacated and remanded the case. *Gable v. State of Oregon*, 203 Or. App. 710, 126 P.3d. 739 (2006). Before remand, however, petitioner sought review by the Oregon Supreme Court, but review was denied. 341 Or. 216, 140 P.3d 1133 (2006). The record from the post-conviction appeal is attached as Resp. Ex. 356-367.

3. On remand, the post-conviction trial court denied relief, holding that petitioner failed to carry his burden by a preponderance of evidence, and that there was no evidence of prejudice other than petitioner's testimony, which the court wrote was "simply not credible." Resp. Ex. 371. The Oregon Court of Appeals affirmed without opinion, 243 Or. App. 389, 256 P.3d 1099 (2011), and the Oregon Supreme Court denied relief in a written opinion. 353 Or. 750, 305 P.3d 85 (2013). The record from the second post-conviction appeal is attached as Rep. Ex. 372-385.

III.

Petitioner has no remaining state remedies on the issues he raises in this habeas corpus proceeding. He has, however, procedurally defaulted on certain issues by his failure to timely pursue to completion all his available remedies, and habeas review of those issues should be denied.

IV.

Relief should be denied on all the claims in the habeas corpus petition.

DATED November 9, 2015.

Respectfully submitted,

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Deputy Attorney General

s/ Nick M. Kallstrom

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